

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

Hector Cantu,	:	
	:	Civil Action No.: <u>1:14-cv-71</u>
	:	
Plaintiff,	:	
v.	:	
	:	
DiabetesHelpNow.com, LLC a/k/a Welco,	:	COMPLAINT
LLC d/b/a Welco Health,	:	JURY
	:	
Defendant.	:	
	:	

For this Complaint, Plaintiff, Hector Cantu, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that Defendant transacts business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

1. Plaintiff, Hector Cantu ("Plaintiff"), is an adult individual residing in Brownsville, Texas, and is a "person" as the term is defined by 47 U.S.C.A § 153(39).
2. Defendant, DiabetesHelpNow.com, LLC a/k/a Welco, LLC d/b/a Welco Health ("Defendant"), is a Florida business entity with an address of 902 Clint Moore Road, Suite 100, Boca Raton, Florida 33487, and is a "person" as the term is defined by 47 U.S.C.A § 153(39).

FACTS

3. In or around February 2013, Defendant began calling Plaintiff's cellular telephone.
4. At all times mentioned herein, Defendant called Plaintiff to solicit its products.
5. Plaintiff never provided his cellular telephone number to Defendant, nor did he consent to be contacted by an automated system.
6. During the initial phone call, informed a live representative that he was not interested in Defendant's products. Plaintiff then requested that the calls cease.
7. Thereafter, Defendant began calling Plaintiff's cellular telephone using an automatic telephone dialing system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.
8. When he answered the automated calls, Plaintiff heard a prerecorded message stating: "This is Diabetes Help Now. We are calling to offer you a meter for blood sugar levels."

A. Plaintiff Suffered Actual Damages

9. Plaintiff has suffered and continues to suffer actual damages as a result of Defendant's unlawful conduct.
10. As a direct consequence of Defendant's acts, practices and conduct, Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

11. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. Defendant contacted Plaintiff using an ATDS or predictive dialer and/or by using a prerecorded or artificial message on a cellular telephone.

13. Defendant did not have consent to contact Plaintiff on his cellular telephone.

14. The calls from Defendant to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

15. Each of the aforementioned calls made by Defendant constitutes a negligent or intentional violation of the TCPA, including each of the aforementioned provisions of 47 U.S.C. § 227, *et. seq.*

16. As a result of each of Defendant’s negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each of Defendant’s knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(1)(A);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: April 30, 2014

Respectfully submitted,

By: /s/ Jenny DeFrancisco

Jenny DeFrancisco, Esq.
CT Bar No.: 432383
LEMBERG LAW LLC
A Connecticut Law Firm
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424